

IN THE
Supreme Court of the United States

OCTOBER TERM, 1944.

No 200.

ORDER OF RAILWAY CONDUCTORS OF AMERICA, et al.,
Petitioners,

v.

THE PENNSYLVANIA RAILROAD COMPANY, AND
BROTHERHOOD OF RAILROAD TRAINMEN,
Respondents.

BRIEF ON BEHALF OF RESPONDENT, THE PENNSYLVANIA
RAILROAD COMPANY, IN OPPOSITION TO PETITION
FOR A WRIT OF CERTIORARI.

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ORDER OF RAILWAY CONDUCTORS OF AMERICA; H. W. FRASER
AS PRESIDENT OF THE ORDER OF RAILWAY CONDUCTORS
OF AMERICA, ETC., ET AL., *Petitioners*,

v.

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OF RAILROAD TRAINMEN, *Respondents*.

BRIEF ~~ON BEHALF~~ OF RESPONDENT, THE PENN-
SYLVANIA RAILROAD COMPANY, IN OPPOSI-
TION TO PETITION FOR A WRIT OF
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OPINION BELOW.

The opinion of the Court of Appeals for the District
of Columbia is reported in 141 F. (2d) 366.

JURISDICTION.

The petitioners invoke the jurisdiction of this Court under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. Sec. 347(a)).

STATUTE INVOLVED.

The statute here involved is the Railway Labor Act, as amended by the Act of June 21, 1934 (45 U. S. C. Sec. 151, *et seq.*). Section 2, first, second, third, fourth, ninth and tenth, the paragraphs specially involved, are set forth in the Appendix to this brief.

STATEMENT.

The respondent, The Pennsylvania Railroad Company, opposes the petition for certiorari, and respectfully submits to this Court that the transcript of record filed in support of the petition discloses no ground for the issuance of the writ. In order more clearly to present the issues raised by the petition, respondent desires to present a restatement of the case in a form shorter and more concise than that contained in the petition.

On November 27, 1942, the petitioners, the Order of Railway Conductors (hereinafter sometimes referred to as the "Conductors"), filed their complaint in the District Court of the United States for the District of Columbia against The Pennsylvania Railroad Company (hereinafter referred to as the "Railroad"), and the Brotherhood of Railroad Trainmen (hereinafter referred to as the "Trainmen"). The complaint was later amended to include the National Mediation Board (hereinafter referred to as the "Board") as an additional defendant. The amended complaint alleged that the Railroad and the Trainmen joined in a course of action designed to influence and coerce the class of road conductors on the

©Pennsylvania Railroad in their choice of a representative (R. 14-17), that the Conductors brought this matter to the attention of the Board (R. 17, 23-33), but that thereafter the Board held a representation election among the class of road conductors without investigating the Conductors' charges of influence and coercion and, on the basis of a majority vote of the road conductors, certified the Trainmen as the designated and authorized representative of that class (R. 17-19).

As alleged in the amended complaint, the coercion and interference on the part of the Railroad consisted of encroachments upon the "jurisdictional province and representative rights" (R. 15) of Conductors as the bargaining representative of the class of road conductors on the Pennsylvania Railroad (R. 6-17). These encroachments were alleged to have been accomplished by the action of the Railroad in agreeing with the Trainmen as to rates of pay and working conditions of employees for whom the Conductors claimed to possess exclusive bargaining rights (R. 6-13), in publicizing the fact of that agreement (R. 15), in making settlement of certain time claims with the Trainmen on the basis of that agreement (R. 15), in refusing to restore to Conductors their asserted jurisdictional rights (R. 16), and in taking advantage of the said agreement with Trainmen for the purpose of saving money (R. 16-17).

The relief prayed for in the amended complaint was that the election be vacated and set aside (R. 20) and that the Railroad be ordered to negotiate with the Conductors with respect to the working conditions of the class of road conductors, and be enjoined from coercing and interfering with the class of road conductors in their choice of a representative (R. 22).

The District Court of the United States for the District of Columbia dismissed the amended complaint for failure to state a cause of action (R. 89).

The Conductors then appealed to the United States Court of Appeals for the District of Columbia (R. 90). Each of the appellees on that appeal filed a motion to dismiss the appeal for lack of jurisdiction in the court to consider the issues presented by the complaint (R. 92-108). The Court of Appeals granted the several motions to dismiss on the grounds, first, that the certification of the Board was final and unreviewable on the authority of the decision of this Court in *Switchmen's Union v. National Mediation Board*, 320 U. S. 297 (1943); second, that the federal courts do not have jurisdiction over the issues involved in the light of the decisions of this Court in *General Committee v. M-K-T. R. Co.*, 320 U. S. 323 (1943), and *General Committee v. Sou. Pac. Co.*, 320 U. S. 338 (1943); and third, that, even if it be conceded that the District Court had jurisdiction to grant the relief asked, the cause of action against the Railroad seeking an injunction against coercion and influence had become moot because the controversy out of which that cause of action arose was terminated by the Board's certification of the Trainmen as the authorized bargaining representative of the class of employees in question, and because there was no allegation that the coercion and influence on the part of the Railroad was continuing (R. 114-115).

The petition for certiorari in this case goes only to the validity of the decision of the Court of Appeals in dismissing the appeal as to the Railroad and the Trainmen. It should be noted that the petitioners do not question the action of the Court of Appeals in dismissing the appeal as to the Board (Petition, 1). Nevertheless, even with the Board no longer a party to the suit, the petitioners take the position that the federal courts have the power to review a certification issued by the Board and set it aside in order to protect and enforce the statutory right of railroad employees to be free from coercion and influence on the part of a carrier (Petition, 10), i. e., the

power to control the action of the Board although it is not a party to the proceeding.

Briefly stated, the only question raised by the petition is whether or not the decisions of this Court in *Switchmen's Union v. National Mediation Board*, *General Committee v. M-K-T. R. Co.*, and *General Committee v. Sou. Pac. Co.*, *supra*, govern this case. The merits of the complaint are not in issue. However, by admitting that the Board is not properly a party to this proceeding, the petitioners put themselves in a weaker position for reversal of the Board's certification than was the position of the petitioners in the *Switchmen's Union* case, where the Board was a party to the suit.

In the light of these circumstances, respondent restates the first of the "Questions presented" in the petition, as follows:

In view of this Court's decision in the *Switchmen's Union* case, do the federal courts have the power to set aside a certification issued by the Board, when the Board is not a party to the litigation, on the basis of allegations to the effect that the carrier had interfered with and coerced certain of its employees in their choice of a representative?

The second of the "Questions presented," as stated in the petition, is not relevant at the present stage of this case. That question merely raises the issue of whether or not coercion and interference by a carrier in its employees' choice of a representative is forbidden by the Railway Labor Act if such coercion and interference occurs prior to, rather than during, the election at which the representative is chosen. A decision on that question was not necessary in the Court of Appeals below on motions to dismiss the appeal and it is, consequently, not necessary here. In fact, the court below intimated (R. 114-115) that it considered the Railway Labor Act as forbidding coercion by a carrier at any time, but it felt bound

to dismiss the appeals because the Board's ultimate certification ended the matter. Therefore, for the purposes of this petition, the question of the time when the alleged coercion occurred is immaterial, so long as it is clear from the record that it occurred prior to the certification by the Board.

SUMMARY OF ARGUMENT

The decision of this Court in the *Switchmen's Union* case renders the certification of the Board final and unreviewable. The fact that the certification is attacked on the ground that the railroad engaged in coercion and influence of its employees does not serve to subject the certification to judicial review. Since the issues involved in the instant case and the facts presented therein are closely parallel to the issues and facts involved in the *Switchmen's Union* case, that decision cannot be distinguished. The fact that the Board is no longer a party to the proceedings and therefore has no opportunity to defend its action before this Court makes it even clearer that its certification is immune to judicial review in the present case.

The petitioners' charges of coercion and influence on the part of the railroad are based entirely upon alleged violations of the petitioners' so-called exclusive bargaining rights. The present case is therefore founded upon a jurisdictional dispute, and it has been held by this Court in the *M. K. T. R. Co.* case and the *Southern Pacific* case that such disputes do not present justiciable issues. The fact that a jurisdictional dispute is presented to the courts as a matter of coercion and influence does not serve to render such a dispute subject to the jurisdiction of the courts.

The issues raised by the charges of coercion and influence on the part of the railroad have become moot. The violations of the Railway Labor Act charged by the peti-

tioners are violations of the rights of employees, and the petitioners no longer represent any class of employees on the Pennsylvania Railroad and therefore have no standing to complain of alleged infringement of employees' rights. Furthermore, the controversy with respect to which such infringement is alleged to have occurred is ended by the Board's certification, and the infringement cannot now be continuing. Consequently, neither injunctive nor declaratory relief in connection with the charges made by petitioners is any longer available to them.

ARGUMENT.

I.

Under the Switchmen's Union Decision, the Federal Courts do not Have the Power to Set Aside a Certification of the National Mediation Board, and the Fact That the Certification is Attacked on the Ground That the Railroad Engaged in Coercion and Influence Does not Alter the Result.

In the case of *Switchmen's Union v. National Mediation Board*, 320 U. S. 297 (1943), the facts were that the Board held an election among all the yardmen on the New York Central System in order to determine their choice of a representative and certified the Trainmen as the duly authorized bargaining agent of all yardmen. The switchmen's organization contended that the yardmen on certain designated parts of the System should have been permitted to vote separately for a representative. Section 2, fourth, of the Railway Labor Act, as amended (45 U. S. C. Sec. 151, *et seq.*) provides among other things that:

"The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."

It was the position of the Switchmen's Union that the employees whom they had represented were denied this right by the action of the Board in voting all yardmen on the System as a craft unit.

Upon a review of the legislative history of the applicable provisions of the Railway Labor Act, this Court concluded that the action of the Board in holding an election and issuing a certification was not subject to judicial review. That conclusion was based upon several considerations. In the first place it was found that Congress had delegated to the Board the task of protecting the "right" of employees embodied in Section 2, fourth, of the Act, and, since Congressional specification of one method for the protection of a right normally excludes other methods, it is to be assumed that Congress did not contemplate judicial review. Secondly, the provisions of Section 2, ninth, of the Act making compliance with the Board's certification mandatory were viewed as also indicating that Congress intended such a certification to be final and conclusive.

To indicate that the present case is controlled by the decision in *Switchmen's Union v. National Mediation Board*, *supra*, it is only necessary briefly to review the facts. The petitioners assert that the Railroad and the Trainmen conspired to violate the "right" of employees, set forth in Section 2, third, of the Act, to designate their representatives without interference, influence, or coercion on the part of the carrier. That "right," like the right involved in the *Switchmen's Union* case, is protected by Section 2, ninth, wherein it is provided that:

"In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier." (Emphasis supplied.)

Furthermore, the statutory mandate of Section 2, ninth, requiring the carrier to give effect to the Board's certification is of no less significance in the present case than it was in the *Switchmen's Union* case. The form of the attack is immaterial once it is found that Congress intended that certification to be final. Finally, it should be noted that in this case, as in the *Switchmen's Union* case, the Board was fully aware of the facts on the basis of which its certification is attacked. The Conductors brought to the attention of the Board the charges of interference and coercion on the part of the Railroad. Those charges were before the Board when it issued its certification and, accordingly, the certification must be taken as a determination of the entire representation dispute including the allegations of carrier coercion.*

Despite the seemingly perfect parallel between the circumstances of the present case and of the *Switchmen's Union* case, it is contended by the petitioners that a different rule should here apply. The petitioners, in attempting to distinguish the present case from the *Switchmen's Union* case, place great emphasis upon certain language in the opinion in the latter case and particularly upon certain references to *Texas & N. O. R. Co. v. Ry. Clerks*, 281 U. S. 548 (1930), and *Virginian Ry. v. Federation*, 300 U. S. 515 (1937). It is true that in the *Texas & N. O. R. Co.* case the Supreme Court held that under the Railway Labor Act of 1926 the right of employees to be free from

*The Board twice gave its reasons for failure to take action in connection with the charges of coercion. First, in an informal letter to the Conductors (R. 33-40), the Board ruled that it had no jurisdiction over the alleged coercion because it occurred prior to the election. Second, in an equally informal manner in its brief on the merits of the appeal in the court below, the Board stated that another reason for its rejection of the Conductor's charges was that those charges, even if true, did not set forth a case of carrier coercion or interference relating to the designation of a representative by the employees. It thus appears that the first informal statement of reasons by the Board should not be treated as the only basis for the Board's action, as the petitioners here attempt to do. If the Board were now a party to this proceeding it might be able to give this Court a perfectly valid reason for its action with regard to the Conductors' charges of coercion.

coercion and influence by a carrier in their choice of a representative may be enforced in an appropriate suit. It should be remembered, however, that under that Act there was no provision for administrative enforcement of that right such as is now contained in Section 2, ninth, of the Act, as amended in 1934. The significance of that change is made plain by what this Court said in the *Switchmen's Union* case (at p. 300 of 320 U.S.), viz., that the only purport of the *Texas & N. O. R. Co.* decision was that "if the absence of jurisdiction of the federal courts meant a sacrifice or obliteration of a right which Congress had created, the inference would be strong that Congress intended the statutory provisions governing the general jurisdiction of those courts to control." Since the right, guaranteed by Section 2, third, of the Act, to be free from carrier interference and coercion is now protected by being made a part of the duty of the Board under Section 2, ninth, there is no longer any reason for the courts to assume the enforcement of that right when the Board has taken jurisdiction of the representation dispute and issued a final certification.

The *Virginian Ry.* case, *supra*, involved the question whether the federal courts had jurisdiction to enforce the provisions of Section 2, ninth, requiring a carrier to treat with a representative designated and certified by the Board. Since no other means for the enforcement of that provision were specified in the Act, this Court held that judicial enforcement of the statutory mandate was appropriate. That case has no application here because it dealt solely with a provision of the Act for which no means of enforcement, either administrative or judicial, was provided by Congress.*

Thus, the decision in the *Texas & N. O. R. Co.* and *Virginian Ry.* cases, holding judicial relief available under the facts there presented, were founded on the fact that no other means for the enforcement of the substantial

* Although an injunction against coercion and interference had been issued by the lower court in that case, the carrier did not challenge that part of the decree on appeal to this Court.

rights at issue had been provided by Congress and it was therefore proper to assume that Congress intended they should be enforced judicially. But the Act as it now stands, since the 1934 amendment, specifically provides for the enforcement by the Mediation Board of the employees' statutory rights to freedom from coercion and influence,* and this Court held in the *Switchmen's Union* case that the Act also makes plain the intent of Congress that the courts should not interfere with the Board's discharge of the duties laid upon it by the statute. The Court found in the language of the Act a clear indication that Congress specifically intended that representation disputes such as that involved in the *Switchmen's Union* case and in the present case were not to become matters of judicial concern after the Board had spoken.†

Therefore, the ultimate significance of the decision in the *Switchmen's Union* case cannot be limited by a strained analysis of certain prior opinions cited by the Court. The fact that there is no limitation or exception to the rule that a Board certification is final and unreviewable appears from the statement of this Court's conclusion in the *Switchmen's Union* case:

"Where Congress took such great pains to protect the Mediation Board in its handling of an explosive problem, we cannot help but believe that if Congress had desired to implicate the federal judiciary and to place on the federal courts the burden of having the final say on any aspect of the problem, it would have made its desire plain * * *

"Under this Act Congress did not give the Board discretion to take or withhold action, to grant or deny relief. It gave it no enforcement functions. It

* The Act provides a second means of enforcement of the right to freedom from coercion and influence in the criminal penalties provided for violation of that right in section 2, tenth.

† See also the language of this Court's opinion in *General Committee v. M. K. T. R. Co.*, 320 U. S. 323, at pp. 332-3.

was to find the fact and then cease. Congress prescribed the command. *Like the command in the Butte Ry. case it contained no exception. Here as in that case the intent seems plain—the dispute was to reach its last terminal point when the administrative finding was made. There was to be no dragging out of the controversy into other tribunals of law.** (Emphasis supplied.)

Since the formal administrative finding of the Board in the present case, certifying the Trainmen as the duly designated and authorized representative of road conductors on the Pennsylvania Railroad, has been construed as the final step in the settlement of representation disputes, the present action represents nothing more than an attempt to drag out that controversy in the courts.

In the present case, the rule of administrative finality of a Board certification applies with even greater force than it did in the *Switchmen's Union* case. The Board is no longer a party to the present proceedings. If the federal courts do not have the power to set aside a certification of the Board in a proceeding to which the Board is a party, it follows *a fortiori* that the certification cannot be nullified in a proceeding to which the Board is not a party.

Petitioners, by their position at this stage of the case, show themselves to be in an inextricable dilemma, made inevitable by the *Switchmen's Union* case. By virtue of that decision, they are forced to admit that they cannot obtain relief against the Board. Therefore, they do not name the Board as a respondent to their petition. On the other hand, they cannot obtain the relief which they seek, unless they succeed in having the Board's certification set aside, and their petition makes it plain that that is their objective (Petition, 10). But any proceeding the purpose of which is to set aside an administrative determination such as that of the Board in this case must cer-

* *Switchmen's Union v. National Mediation Board*, 320 U. S. 297, at pp. 303, 305.

tainly include the administrative body as a party so that that body may defend its determination.* Without the Board as a party, petitioners must fail in their admitted attempt to have the Board's certification set aside. And if the Board were made a party, their petition would appear even more obviously to be what it in fact is, namely, an attempt to obtain judicial review of the Board's determination, which is precluded by the decision of this Court in the *Switchmen's Union* case.

It is clear that the petitioner's ultimate contention in this case is that the federal courts can and should accomplish indirectly something which this Court has held they have not the power to accomplish directly. The fundamental inconsistency in the petitioners' position is that they recognize the full sweep of the *Switchmen's Union* case in insulating the Board's certification from judicial review under all circumstances, but at the same time they attempt to carve out of the principle announced in that case the large field of representation disputes in connection with which the employees who are dissatisfied with the result may claim that their right to be free from coercion and influence has been violated by the carrier. If any such exception can be read into the decision of this Court in the *Switchmen's Union* case, it becomes apparent that few representation disputes will in reality be settled by a certification of the Board.

* Although the federal courts seem never to have been called upon to decide specifically that an administrative agency is an indispensable party to a proceeding to set aside or modify one of its administrative findings, such a rule is necessarily implied in a number of cases dealing with the question as to which one of several public officers or agencies are necessary parties to the suit. See *Wells v. Roper*, 246 U. S. 335, 337 (1918); *North Dakota v. Chicago & N. W. Ry. Co.*, 257 U. S. 485, 490 (1922); *Board v. Pacific Oil Co.*, 299 U. S. 65, 70-71 (1936); *Neher v. Harwood*, 128 F. 2d 846 (C. C. A. 9th) (1942).

II.

Under the Decisions of this Court in the *M. K. T. R. Co. Case* and the *Southern Pacific Case*, Charges of Coercion and Influence on the Part of a Railroad are not Justiciable when the Alleged Coercion and Influence Consists of an Asserted Violation by the Railroad of the Jurisdictional Rights of a Labor Organization.

In both the *M. K. T. R. Co.* case and the *Southern Pacific* case, as in the instant case, the petitioner was a labor organization and the respondents were a carrier and a rival labor organization. In each of those cases, the petitioner complained that the railroad involved had entered into agreements with the respondent labor organization, and the petitioner contended that those agreements were illegal and void under the Railway Labor Act because they represented an encroachment upon the bargaining authority or jurisdictional rights of the petitioner. Upon a review of the history and applicable provisions of the Act, this Court concluded that the federal courts are without power to resolve such controversies because the issues raised are not justiciable. It was found that Congress had not specifically provided for the judicial determination of jurisdictional disputes and "that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate."*

The present case is controlled by the decisions of this Court in the cases cited above. Here, the entire controversy had its inception in, and now rests ultimately upon, an agreement between the Railroad and the Trainmen, which agreement, the petitioners contend, invaded and encroached upon the petitioners' "jurisdictional rights" (Petition, 5). The acts of coercion and interference with which the Railroad is charged consist merely of asserted violations of the petitioners' bargaining jurisdiction in connection with that agreement.

* *M. K. T. R. Co.* case, 320 U. S. 323, at page 333.

As set forth in respondent's Statement, at page 3, *supra*, the amended complaint asserted that the Railroad and the Trainmen concluded an agreement providing for the rates of pay and working conditions of a class of employees whom the Conductors had the exclusive right to represent; that the Railroad publicized that agreement among all of the employees represented by Conductors; that the Railroad made settlement with the Trainmen, on the basis of that agreement, of certain time claims of employees presented by the Trainmen; and that the Railroad continued to deal with the Trainmen, and refused to deal with the Conductors, in regard to matters involving certain employees whom the Conductors claimed the exclusive right to represent. These alleged acts are the only specific acts upon which the petitioners rely for their charge of interference and coercion.

The controversy presented by this complaint is in substance only a familiar form of jurisdictional dispute between the Conductors and the Trainmen. Speaking of such disputes, this Court said in the *M.-K.-T. R. Co.* case, at pp. 334-7 of 320 U. S.:

"It is true that the present controversy grows out of an application of the principles of collective bargaining and majority rule. It involves a jurisdictional dispute—an asserted overlapping of the interests of two crafts. It necessitates a determination of the point where the authority of one craft ends and the other begins or of the zones where they have joint authority. . . . Congress did not attempt to make any codification of rules governing these jurisdictional controversies. It did not undertake a statement of the various principles of agency which were to govern the solution of disputes arising from an overlapping of the interests of two or more crafts. It established the general principles of collective bargaining and applied a command or prohibition enforceable by judicial decree to only some of its phases. . . .

"It seems to us plain that when Congress came to the question of these jurisdictional disputes, it chose not to leave their solution to the courts. * * * Rather the conclusion is irresistible that Congress carved out of the field of conciliation, mediation and arbitration only the select list of problems which it was ready to place in the adjudicatory channel. All else it left to those voluntary processes whose use Congress had long encouraged to protect these arteries of interstate commerce from industrial strife. The concept of mediation is the antithesis of justiciability." (Emphasis supplied.)

The amended complaint in this case presents issues which fall squarely within the principles expressed in the language of this Court quoted above. As in the *M.-K.-T. R. Co.* case, there is here "an asserted overlapping of the interests of two crafts," and, although the petitioners contend that the actions of the Railroad in dealing with the jurisdictional dispute amounted to coercion of employees in their choice of a representative, a decision on those charges of coercion plainly "necessitates a determination of the point where the authority of one craft ends and the other begins." Thus, the petitioners' contention must be to the effect that, although the federal courts have not been given the power to resolve jurisdictional disputes, it is only necessary to assert that the dispute developed into carrier coercion and interference in order to place the jurisdictional controversy before the courts.

In the final analysis, the petitioners are attempting to distinguish the *M.-K.-T. R. Co.* case and the *Southern Pacific* case by the same reasoning by which they attempt to distinguish the *Switchmen's Union* case. Their ultimate contention is simply that the federal courts may accomplish indirectly an adjudication of a jurisdictional dispute, though by direct action such disputes are not

justiciable. If the petitioners are correct in their contention, that a jurisdictional dispute is justiciable so long as it is presented to the courts as a matter of coercion and influence by a railroad, it appears certain that all such disputes will ultimately find their way into the courts, and the *M.-K.-T. R. Co.* case and the *Southern Pacific* case will have no practical significance as interpretations of the Railway Labor Act.

III.

Since the Administrative Finding of the Board is Unreviewable, the Issues Raised by the Charges of Coercion and Influence on the Part of the Railroad are now Moot, and the Petitioners, Having Ceased to Represent the Employees Involved, Have no Standing to Complain.

The Court of Appeals, in addition to holding that the petitioners' case did not present questions within the jurisdiction of the court because of the finality of the Board's certification, also found (R. 115) that the issue of coercion by the Railroad had become moot because the controversy out of which those charges arose had been brought to an end and because there was no allegation in the amended complaint which would indicate that the alleged coercion was continuing. It is submitted that this conclusion is sound.

Since it has been shown above that the *Switchmen's Union* case cannot upon any rational basis be distinguished from the present case, more particularly because the proceeding against the Board has been dropped by the petitioners, it remains only to be determined whether the petitioners have a cause of action against the Railroad and the Trainmen over which the courts can exercise jurisdiction.

Once it has been settled that the action of the Mediation Board in certifying the Trainmen as the duly desig-

nated and authorized representative of the class of road conductors on The Pennsylvania Railroad is final and unreviewable, it follows that the Conductors no longer possess any legal standing to assert or "protect" the rights of road conductors even if it should be assumed that those rights were violated by the carrier. The Railway Labor Act, in Section 2, confers and imposes a number of statutory rights and duties upon the respective parties to railway labor disputes. Section 2 confers no rights upon railroad labor organizations, as such, apart from the rights which they may acquire by virtue of their representation of a class or craft of railroad employees. The rights are conferred in the first instance upon the employees themselves, and this is quite evident from the language of the Act. Thus, Section 2, under the heading: "General Purposes," provides for:

"freedom of association among *employees*"

and for the:

"complete independence of carriers and of *employees* in the matter of self-organization."

Section 2, first, specifies the duties of "all carriers and *employees*."

Section 2, second, provides for the handling of disputes between carriers and their employees.

Section 2, fourth, provides that it shall be unlawful for any carrier "to influence or coerce *employees* in an effort to induce them to join or remain or not to join or remain members of any labor organization." It is clear, therefore, that the subsections of Section 2 of the Act deal with the rights, duties, and relations between the carriers and their employees, both individually and collectively. The railroad labor organization enters this statutory scheme merely as the statutory "representative of employees" and obviously its status as such statutory

representative rests, under the statutory scheme, on the Board's certification of it as such statutory representative.

The "right" which the petitioners in this case purport to be enforcing is therefore a right which belongs only to the class of road conductors on the Pennsylvania Railroad and not to the petitioners as a labor organization which at one time represented that class or craft. The finality of the Board's certification of the Trainmen as the duly authorized and designated representative of the road conductors not only terminates the petitioners' rights of representation for collective bargaining purposes but also ends their standing in court to seek judicial enforcement of those rights of road conductors which are alleged to have been violated by the Railroad. If those rights have been violated they may be judicially enforced, if at all, by the individual employes concerned or by their present statutory representative, the Trainmen, but in no view of the case may those rights now be enforced by the petitioners.

Another effect of the finality of the Board's certification is to close the entire representation dispute. Since the dispute is ended, it is evident that no further acts of alleged coercion or interference are continuing with respect to that dispute. In view of these facts an injunction will not lie to prevent the Railroad from performing acts which it is not now committing and cannot now commit.

Furthermore, since the Board has acted and has designated the Trainmen as the representative of road conductors on the Pennsylvania Railroad, a declaratory judgment proceeding to determine whether or not the alleged acts of the Railroad constituted interference, influence or coercion would not lie because no actual controversy is any longer presented and the question has become theoretical, so that a decision thereon would not in any way affect the rights or other legal relations of the parties.

It can thus be said that, since the Board is no longer involved in the proceeding, and since its certification is final and unreviewable, the issues between the Conductors, on the one hand, and the Railroad and the Trainmen, on the other hand, have become moot. Therefore, if the action of the Court of Appeals in dismissing the appeal as to the Board was proper (and it is admitted by the petitioners that it was proper), it follows that the court's decision in dismissing the appeal as to the Railroad and the Trainmen was inevitably required because the issues on those appeals are no longer alive.

CONCLUSION.

From the foregoing analysis, it will be seen that the basic question in the instant case is whether or not the decisions of this Court in the *Switchmen's Union, M.-K.-T. R. Co.*, and the *Southern Pacific* cases are capable of being distinguished from the present case. If the *Switchmen's Union* case applies, the certification issued by the Board in the instant case is final and the petitioners are no longer the statutory bargaining representative of the class of road conductors on the Pennsylvania Railroad. Furthermore, whether or not the certification of the Board is subject to being reviewed by the Federal courts, that certification cannot be attacked successfully on the basis of the facts relied upon by the petitioners in this case. Those facts merely set forth a familiar type of jurisdictional dispute, and this Court has held in the *M.-K.-T. R. Co.* and *Southern Pacific* cases that such controversies are not justiciable. Consequently, the facts of such a jurisdictional dispute could not possibly serve as the basis for setting aside a certification of the Board. Finally, if the certification of the Board is final and unreviewable, the petitioners would have no standing to present the instant case to the courts even though justiciable issues were in-

volved, because the controversy with respect to which those issues arose has been terminated and the petitioners have no legal interest in those issues.

It is submitted that there is presented here no question of general importance, of Federal statutory construction, or of departure from the decisions of this Court calling for review upon certiorari. It is therefore respectfully submitted that the petition should be denied.

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APPENDIX.

Excerpts from the Railway Labor Act.

(Act of May 20, 1926, as amended by Act of June 21, 1934;
45 U. S. C., Sec. 151, *et seq.*)

"GENERAL PURPOSES.

"Sec. 2. The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

"GENERAL DUTIES.

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to

confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

"Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other: and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

"Fourth. Employees shall have the right to organize, and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this Act shall be construed to prohibit a carrier from permitting an em-

ployee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

"Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

"Tenth. The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than \$1,000 nor more than \$20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States; all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided*, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent."